

REMARKS/ARGUMENTS

Reconsideration of the application is respectfully requested.

The Section 112 Rejections of the Claims

Claims 21-23 and 27, 28 were objected to because of the use of “vertical” and not defining vertical with respect to an element. Applicant has amended the claims to define vertical with respect to a surface upon which the shelter is erected, and thus submits that the objection should be withdrawn.

Claim 28 was objected to as comprising two hubs. Applicant has amended the claim to further point out that the hub called out in claim 21 is a first hub, and has further claimed a second hub. Applicant submits that the amendments to the claim overcome the objections.

Claim 30 has been cancelled.

The Section 103 Rejections of the Claims

Claims 21-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,732,726 to Lee in view of U.S. Patent No. 6,418,949 to Lin et al. This rejection is respectfully traversed.

Claim 21, the only remaining independent claim in the application, is directed to a shelter having, *inter alia*, a pole assembly that includes a first upright pole attached to the hub by a first connection. The first upright pole includes a first upper pole segment and a first lower pole segment, with the lower pole segment extending more vertically than the upper pole segment. The first connection is nonrotatable so that the upright pole does not substantially rotate relative to the hub. This feature is not shown by *Lee* or *Lin*.

Lee is directed to a cabin tent pole system and includes a central hub 20, but does not include a connection as set forth in claim 21. That is, the reference does not include a connection that is nonrotatable so that an upright pole does not substantially rotate relative to the hub. *Lee* includes an upright pole that meet the description in claim 1, but the upright pole is not

connected to the hub as is set forth in claim 21. That is, so that the first upright pole does not substantially rotate relative to the hub. Instead, rotation of the upright pole in *Lee* is prevented by attachment of the poles directly to the cabin tent in that reference.

Lee is directed to a cabin tent, and not a shelter. Therefore, the problems that the present invention address are not relevant to the cabin tent of *Lee*. Collapsing of a tent does not occur in a structure such as is shown in *Lee* because the poles are attached to the tent from the ground all the way to the hub. Thus, after the tent is fully attached to the pole, the pole cannot rotate with respect to the hub. Therefore, *Lee* does not suffer the same problems that a shelter would encounter. As such, there is no motivation to modify *Lee* to overcome the problems that are addressed by the claimed invention.

Lin does not make up for the deficiencies of *Lee*. First, *Lin* is nonanalogous art to the claims of the application. The reference is directed to an umbrella shaft, which is clearly outside the art of shelters. For a reference outside an art to be analogous, it must be in the same field of endeavor or must be reasonably pertinent to the particular problem with which the applicant was concerned. It is clear that umbrellas and shelters are not in the same field of endeavor. *Lin* is also not pertinent to the problem at hand. "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *In re Clay*, 23 U.S.P.Q.2d 1058, 1061 (Fed. Cir. 1992). In this particular case, the problem with which the applicants were concerned is collapsing shelters; something totally unrelated to umbrellas. Applicants have discovered that by making the upper pole segment of a upright pole nonrotatable with respect to a hub, the shelter is more stable. A person of ordinary skill would not have looked to umbrella art to find a solution to such a problem, even if guided by the disclosure in *Lee*. Thus, there would be no reason for a person of ordinary skill in the art to view *Lee* and determine that there is a need for a structure such as is shown in *Lin*. In fact, *Lin* is pertinent only in a hindsight reconstruction of the applicant's claims, which is impermissible. There is no other way in which a person of ordinary skill in the art would consider such a reference.

Even if the *Lin* reference were from the applicant's field of endeavor, there is no motivation to combine *Lin* and *Lee*, and such a combination would not result in applicant's invention. As stated above, *Lee* is directed to a tent, and not a shelter. Thus, there is no need for such a structure to have poles that do not rotate relative to the hub. Thus, there is no reason to combine *Lee* with any reference that teaches such a structure, absent using hindsight reconstruction of the applicant's invention.

For at least the foregoing reasons, the rejection in view of *Lee* and *Lin* should be withdrawn.

Claims 21-27 and 29-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,884,646 to Ju in view of *Lee*. *Ju* discloses a foldable tent frame. The tent frame includes a coupling that does not allow rotation of an attached pole. However, the reference does not disclose that an entire upper pole segment and the connection of the pole segment to the hub do not rotate so that the upright pole does not rotate relative to the hub. Applicant has amended claim 21 to further emphasize the fact that the first connection and the first upper pole segment are not rotatable. However, even as the claim was originally written, *Ju* does not disclose or make obvious the invention. As originally filed, claim 21 included that the first upright pole was not to substantially rotate relative to the hub. This is not the case for the *Ju* frame, which allows rotation of the segment 1 relative to B, the rotation of the segment 1a relative to the segment B, and the rotation of the segment 1a relative to the bend C. Each of these loose fittings would allow rotation of the upright pole in *Ju* and thus would not have met the original requirements of claim 21, or the requirements of claim 21 as amended. The addition of the first upper pole segment being nonrotatable further emphasizes the differences between *Ju* and claim 21. For at least these reasons, the rejection of claim 21 should be withdrawn.

For the sake of clarity, the independent claims of the application are discussed in this Amendment. Applicant submits that the independent claims are allowable, and therefore the dependent claims are allowable at least because they are dependent upon allowed claims. Nevertheless, applicant submits that the dependent claims further define subject matter not shown or made obvious by the prior art.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that the claims define patentable subject matter, and that the application is in good and proper condition for allowance. Such action is respectfully solicited.

If the foregoing does not result in a Notice of Allowance in the application, Applicant earnestly solicits the Examiner to call the undersigned at 206-428-3101.

This Amendment is believed to be timely filed and no additional claim fees are due. However, in the event that any extension of time or fees are required, the Commissioner is authorized to charge any additional fees due or credit any overpayment to Deposit Account 12-1216.

Respectfully submitted,

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Date: October 10, 2006

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